Remarks

1. Summary of Office Action

In the Office Action mailed August 27, 2007, the Examiner rejected claims 1-10 and 17-22 on the grounds of nonstatutory double patenting over claim 1 of U.S. Patent No. 6,678,250 ('250) in view of U.S. Patent No. 5,961,599 (Kalavade). The Examiner also rejected claim 16 on the grounds of nonstatutory double patenting over claim 1 of '250. Additionally, the Examiner rejected claims 1-4, 7-10, and 16-22 under 35 U.S.C. § 102(e) as being allegedly anticipated by Kalavade. Finally, the Examiner rejected claims 5 and 6 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kalavade in view of U.S. Patent No. 5,751,963 (Umetsu).

2. Status of Claims

Currently pending are claims 1-10 and 16-22, of which claims 1 and 16 are independent, and the remainder are dependent. Applicants have amended various claims as follows.

Applicants have amended claim 1 to more particularly describe the network monitoring system recited therein. Specifically, the amended claim includes a monitoring device that is associated with the recited first and second gateway devices. Additionally, the second gateway device includes a reporting process used for sending packet delivery performance statistics to the monitoring device. Support for this amendment can be found in the original specification at page 24, lines 10-12, for example. Applicants have also amended claim 1 to more clearly specify that the recited database is organized according to gateway device pairs.

Applicants have amended claim 16 in a manner similar to that of claim 1. Applicants have also amended each of claims 17-22 to improve readability. No new matter has been added by way of any of these amendments.

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3. Response to Rejections on grounds of Nonstatutory Double Patenting

The Examiner rejected claims 1-10 and 17-22 on the grounds of nonstatutory double patenting over claim 1 of '250 in view of Kalavade. The Examiner also rejected claim 16 on the grounds of nonstatutory double patenting over claim 1 of '250.

In view of the ongoing prosecution of the present application with respect to claim rejections other than those on grounds of nonstatutory double patenting, Applicants defer submission of a specific remedy to the double patenting rejections with the present response. However, at such time that the nonstatutory double patenting rejections remain the only impediment to allowance of the claims of the present application, Applicants will consider the propriety submitting a terminal disclaimer.

Additionally, Applicants do not concede the Examiner's arguments with respect to Kalavade making up for any deficiency of claim 1 of '250 as applied to claim 1-10 and 17-22 of the present application.

4. Response to Rejections under 35 U.S.C. § 102(e)

The Examiner rejected claims 1-4, 7-10, and 16-22 under 35 U.S.C. § 102(e) as being allegedly anticipated by Kalavade. Under M.P.E.P. § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Applicants submit that Kalavade does not teach all the elements of any of claims 1-4, 7-10, and 16-22, and that the Examiner's rejections are therefore improper. Applicants first present arguments in connection primarily with claim 1.

Kalavade does not teach "a monitoring device associated with the first and second gateway devices."

Kalavade discloses an invention directed to a method and apparatus for computing the processing delay of a terminal running a system of one or more adaptive applications, wherein

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the terminal may be interconnected with another terminal by a network. In particular, Kalavade discloses that such applications as audio and video that send and receive data by way of a network may be improvised to adapt to network conditions (e.g., column 1, lines 54-56). Kalvade discloses an embodiment comprising two terminals interconnected by an internet, each terminal executing respective adaptation algorithms (e.g., Figure 1 and associated discussion at column 1, lines 54-66). Kalavade further discloses that RTP/RTCP may be used as QoS feedback in the adaptive algorithms (e.g., column 2, lines 28-46). As such, RTP/RTCP is employed *at the devices that are sending and receiving RTP media.* Kalavade does not teach use of RTP/RTCP for the purpose of monitoring a network or in the service a network-monitoring function. Only the sending and receiving devices utilize the performance feedback information. *Kalavade does not teach a monitoring device associated with either terminal.*

In contrast, claim 1 expressly recites, *inter alia*, "a monitoring device associated with the first and second gateway devices." As the invention of claim 1 is directed to a network monitoring system, the role of a monitoring device may be understood as an element of such a system. Kalavade fails to teach such an element, and Applicants therefore submit that claim 1 distinguishes over Kalavade with respect to at least a monitoring device.

Kalavde does not teach "a reporting process for sending the stored packet delivery performance statistics to the monitoring device."

Since Kalavade does not teach a network monitoring system, and further does not teach a network monitoring device, Kalavade cannot teach sending stored packet delivery performance statistics to the monitoring device.

In contrast, claim 1 expressly recites, *inter alia*, "a reporting process for sending the stored packet delivery performance statistics to the monitoring device." Again, sending packet

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delivery performance statistics to the monitoring device can be understood within the context of the invention of claim 1. Kalavade fails to teach this limitation of claim 1 as well.

Applicants submit that Kalavade fails to teach at least the two limitations of claim 1 discussed above, and that claim 1 is therefore allowable.

Independent claim 16 includes, *inter alia*, elements similar to those of claim 1. Therefore Applicants arguments with respect to claim 1 apply to claim 16 as well. Applicants submit that for at least the reasons that claim 1 is allowable, claim 16 is allowable as well.

Each of claims 2-4, 7-10, and 17-22 depends, in one way or another, from either claim 1 or 16, which are allowable for at least the reasons discussed above. Applicants therefore submit that for at least the reason that they depend from an allowable claim, claims 2-4, 7-10, and 17-22 are allowable as well.

5. Response to Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 5 and 6 under 35 U.S.C. § 103(a) as being allegedly obvious over the combination of Kalavade and Umetsu. In order to establish a *prima facie* case of obviousness of a claimed invention by applying a combination of references, the prior art must teach or suggest all of the claim limitations. M.P.E.P. § 2143. Applicants respectfully submit that the combination of Kalvade and Umetsu fails to teach or suggest all of the elements of any of Applicants' claims. Hence the Examiner has not established a *prima facie* case of obviousness.

Claims 5 and 6 each depend, in one way or another, from claim 1, which is allowable for at least the reasons discussed above. Applicants therefore submit that for at least the reason that they depend from an allowable claim, claims 5 and 6 are allowable as well.

Applicants further submit that the Examiner's analysis of Umetsu is factually incorrect. In particular, the Examiner conceded that "Kalavade fails to teach 'gateways are organized

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according to a hierarchical network organization structure to facilitate [the organization of network] performance data.'" The Examiner, citing the abstract and Figure 1 in Umetsu, then asserted that Umetsu makes up for this deficiency by teaching a hierarchical network management system. Applicants submit that Umetsu does not teach or disclose gateways organized in a hierarchical network. Indeed, Umetsu does not teach gateways or any other specific devices in communication with each other that are arranged in a hierarchical network.

Rather, Umetsu teaches a proxy agent node that services requests for network resources by one or more manager nodes. Umetsu discloses (column 1, lines 24-27) that "network resources" correspond to "a data base containing fault information, configuration information, performance information, job information, etc., for each node." Umetsu does not disclose any devices to which such information applies, let alone teaching them to be organized in a hierarchy. Moreover, Figure 1, cited by the Examiner, illustrates a proxy agent, not a network or devices organized in a hierarchy of any sort.

In view of the above discussion, Applicants submit that Umetsu does not in any way make up for the deficiencies of Kalavade with respect to claims 5 and 6, and that the combination of Kalavade and Umetsu fails to teach or suggest all of the limitations of either claim.

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6. Conclusion

In light of the above remarks, Applicants submit that the application is in good and proper form for allowance and respectfully requests the Examiner to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is invited to call the undersigned patent agent, at 312-913-3353.

Respectfully submitted,

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